



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, 242, and 252

RIN 0750-AI55

Defense Federal Acquisition Regulation Supplement: Defense Contractors Outside the United States—Subpart Relocation (DFARS Case 2015-D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to relocate the text of a DFARS subpart in order to conform with the Federal Acquisition Regulation (FAR) and to make minor related editorial revisions.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Kyoung Lee, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

In order to conform the DFARS with the FAR, this rule moves, with minor editorial changes, the text of DFARS subpart 225.74, Defense Contractors Outside the United States, to DFARS subpart 225.3, Contracts Performed Outside the United States. In addition, this rule revises the introductory texts of the clauses at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, and 252.225-7043, Antiterrorism/Force Protection for Defense Contractors Outside the United States, to reflect the changed location of the prescriptions for use of those clauses, and makes a minor editorial change to the text of each of the clauses. This rule also revises DFARS subparts 204.8, 212.3, and 242.3 to revise references to the DFARS text that has been relocated from DFARS subpart 225.74 to DFARS subpart 225.3.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the

policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule only relocates existing text within the DFARS, makes corresponding revisions to references related to that text, and makes a minor editorial change to two clauses. This final rule is not required to be published for public comment, because it has no effect beyond the internal operating procedures of DoD, and the rule has no cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0460, entitled Synchronized Predeployment and Operational Tracker (SPOT) System.

List of Subjects in 48 CFR Parts 204, 212, 225, 242, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 225, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.804 [Amended]

2. Amend section 204.804 in paragraph (2) by removing "PGI 225.7404(e)" and adding "PGI 225.373(e)" in its place.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

3. Amend section 212.301 by—

- a. In paragraph (f) (x) (Y), removing "225.7402-5(a)" and adding "225.371-5(a)" in its place; and
- b. In paragraph (f) (x) (Z), removing "225.7403-2" and adding "225.372-2" in its place.

PART 225—FOREIGN ACQUISITION

4. Add section 225.370 to subpart 225.3 to read as follows:

225.370 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, follow the procedures at PGI 225.370(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures at Army in Europe Regulation 715-9, available at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html under "AE Regs & Resources."

(c) For work performed in Japan or Korea, see PGI 225.370(b) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

(d) For work performed in the U.S. Central Command area of responsibility, follow the procedures for theater business clearance/contract administration delegation instructions at PGI 225.370(c).

5. Add sections 225.371, 225.371-1, 225.371-2, 225.371-3, 225.371-4, 225.371-5 to subpart 225.3 to read as follows:

225.371 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

For additional information on contractor personnel supporting U.S. Armed Forces, see PGI 225.371.

225.371-1 Scope.

(a) This section applies to contracts that involve contractor personnel supporting U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations; or
- (3) Other military operations or military exercises, when designated by the combatant commander.

(b) Any of the types of operations listed in paragraph (a) of this section may include stability operations such as—

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

225.371-2 Definition.

"Designated operational area" is defined in the clause at 252.225-7040. See PGI 225.371-2 for additional information on designated operational areas.

225.371-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a designated operational area may include, but is not limited to, the types of support listed in PGI 225.371-3(a).

(b) The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(c) The contracting officer shall specify in the solicitation and contract—

(1) Valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the designated operational area; and

(2) Any other Government support to be provided, and whether this support will be provided on a reimbursable basis, citing the authority for the reimbursement.

(d) Medical support of contractor personnel. The contracting officer shall provide direction to the contractor when the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c) (2) (ii) of the clause at 252.225-7040. For additional information, see PGI 225.371-3(d).

(e) Letter of authorization. Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization (LOA) signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to under the contract. For additional information on LOAs, see PGI 225.371-3(e).

225.371-4 Law of war training.

(a) Basic training. Basic law of war training is required for all contractor personnel supporting U.S. Armed Forces deployed outside the United States. The basic training normally will be provided through a military-run training center. The contracting officer may authorize the use of an alternate basic training source, provided the servicing DoD legal advisor concurs with the course content. An example of an alternate source of basic training is the web-based training provided by the Defense Acquisition University at <https://acc.dau.mil/CommunityBrowser.aspx?id=18014&lang=en-US>.

(b) Advanced law of war training. (1) The types of personnel that must obtain advanced law of war training include the following:

- (i) Private security contractors.
- (ii) Security guards in or near areas of military operations.
- (iii) Interrogators, linguists, interpreters, guards, report writers, information technology technicians, or others who will come into contact with enemy prisoners of war, civilian internees, retained persons, other detainees, terrorists, or criminals who are captured, transferred, confined, or detained during or in the aftermath of hostilities.
- (iv) Other personnel when deemed necessary by the contracting officer.

(2) If contractor personnel will be required to obtain advanced law of war training, the solicitation and contract shall specify—

(i) The types of personnel subject to advanced law of war training requirements;

(ii) Whether the training will be provided by the Government or the contractor;

(iii) If the training will be provided by the Government, the source of the training; and

(iv) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

225.371-5 Contract clauses.

(a) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force

(CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Peace operations consistent with Joint Publication 3-07.3; or

(4) Other military operations or military exercises, when designated by the combatant commander or as directed by the Secretary of Defense.

(b) For additional guidance on clauses to consider when using the clause at 252.225-7040, see PGI 225.371-5(b).

6. Add sections 225.372, 225.372-1, and 225.372-2 to subpart 225.3 to read as follows:

225.372 Antiterrorism/force protection.

225.372-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in PGI 225.372-1.

225.372-2 Contract clause.

Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial

items, that require performance or travel outside the United States, except for contracts with—

- (a) Foreign governments;
- (b) Representatives of foreign governments; or
- (c) Foreign corporations wholly owned by foreign governments.

7. Add section 225.373 to subpart 225.3 to read as follows:

225.373 Contract administration in support of contingency operations.

For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.373.

8. Add section 225.374 to subpart 225.3 to read as follows:

225.374 Use of electronic business tools.

See 218.272 concerning the use of electronic business tools in support of a contingency operation or humanitarian or peacekeeping operation.

225.802-70 [Amended]

9. Amend section 225.802-70, by removing “225.74, Defense Contractors Outside the United States” and adding “225.3, Contracts Performed Outside the United States” in its place.

Subpart 225.74 [Removed and Reserved]

10. Remove and reserve subpart 225.74, consisting of sections 225.7401, 225.7402, 225.7402-1, 225.7402-2, 225.7402-3, 225.7402-4, 225.7402-5, 225.7403, 225.7403-1, 225.7403-2, 225.7404, and 225.7405.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.302 [Amended]

11. Amend section 242.302 in paragraph (S-72) by removing "PGI 225.7402-5(a)(iv)" and adding "PGI 207.105(b)(20)(C)(9)" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7040 [Amended]

12. Amend section 252.225-7040 by—

- a. In the introductory text, removing "225.7402-5(a)" and adding "225.371-5(a)" in its place;
- b. Removing the clause date "(JAN 2015)" and adding "(JUN 2015)" in its place; and
- c. In paragraph (b)(4), removing "authorized to accompany" and adding "supporting" in its place.

252.225-7043 [Amended]

13. Amend section 252.225-7043 by—

- a. In the introductory text, removing "225.7403-2" and adding "225.372-2" in its place;
- b. Removing the clause date "(MAR 2006)" and adding "(JUN 2015)" in its place; and
- c. In paragraph (d), removing "PGI 225.7403-1" and adding "PGI 225.372-1" in its place.

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